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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/478,071	01/03/00	COPELAND L	511-003

HM22/0220

THE HALVORSON LAW FIRM
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EXAMINER	
LEVY, N	
ART UNIT	**PAPER NUMBER**
1616	4

DATE MAILED: 02/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)		
477071	COPELAND		
Examiner		Group Art Unit	
MORGAN		1616	4

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 11/3/00.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1 – 47 is/are pending in the application.

Of the above claim(s) 43 – 47 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1 – 42 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

Applicant's election with traverse of group I, species of claim 6 in Paper No. 3 is acknowledged. The traversal is on the ground(s) that applicant argues the 2 groups do not require separate searches. This is not found persuasive because Examiner does not agree, Group 1 does not require search in sunscreen area, which would be added burden.

The requirement is still deemed proper and is therefore made FINAL.

Claims 43-47 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **with** traverse in Paper No. 3.

Attorney has kindly pointed to what he calls inadvertent Mangling of his name. Examiner has crossed through the misspelling, p.5 of prior Office action, (and requests attorney to do likewise) and inserted Halvorson. This Examiner would be mad if my name were so Mangled it had thought typists could now read my hand writing and so had checked to see the claims as restricted on p.2 were correct, and quit I appreciate your calling my attention to the need for more complete proof reading, to prevent even worse embarrassment.

However, applicant has not identified the single species of treatment, of extract and of active agent, nor have the species of each been declared equivalent.

This application contains claims directed to the following patentably distinct species of the claimed invention: Treatment method species: alkoxylation, polymerization, acetylation, oxidation, reduction, concentration, hydrogenation, partial hydrogenation, interesterification, double bond modification, randomization, and refinement.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-42 are generic.

This application contains claims directed to the following patentably distinct species of the claimed invention: Extract species: amaranth seed oil, anise seed oil, avocado seed oil, barley oil, briza oil, buck wheat oil, candelilla wax, carnuba wax, cassia occidentalis oil, coffee bean oil, deoiled lecithin, dog fish oil, esparto wax, oils from fungi and other microorganisms, guayule plant extract, jojoba oil, jurinea oil, lanolin, laurel berry oil, olestra (olean), olive oil concentrate (phytosqualene), olive sees oil, orange roughy oil, ouricury wax, quinoa seed oil, rye germ oil, shark liver oil, shea butter, sperm whale oil, sugar cane wax, sunflower wax, tall oil, tall oil distillate, Vegepure from wheat grains, and wheat germ oil.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-42 are generic.

This application contains claims directed to the following patentably distinct species of the claimed invention: Species of active agent: emollients, conditioners, pigments, dyes, pharmaceuticals, ultraviolet radiation absorbers, physical radiation blocks, insect repellants, animal repellants, insecticides, pesticides, herbicides, animal attractants, fragrances, and hormones.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-42 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

A telephone call was made to Attorney Kristofer Halvorson on 2/9/01 No answer was received ~~to request an oral election to the above restriction requirement, but did not result in an election being made.~~

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear, if hydrolysis products include or have added to them, unsaponafiable materials. "Materials" is indefinite, and should be further limited. "~~Randonigation" is~~ RANDOMIZATION anbiguous, partial hydrogenation relative.

Interesterification is unclear. Examiner is unfamiliar with Vegepure - if a trade name, it should be identified generically in the claim; trade names not allowable. "Other microorganisms" is indefinite. It is not clear what limitation is intended by "substantive composition"; Neither is "substantive benefits", and "botanical subject"; and surely claims of benefits (i.e. 18)," substantive benefits to an in animate object" should be quantified, and quantified.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) -308-2412. The examiner can normally be reached on Tuesday through Friday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) -308-5628. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Levy/LR

February 16, 2001

NEIL S. LEVY
PRIMARY EXAMINER